

Eastern District of California

Bankruptcy Judge
Modesto, California

1. [13-91701](#)-E-11 MARVAIS WADEN AND SHAIMA CONTINUED STATUS CONFERENCE RE:
KAKAR VOLUNTARY PETITION
9-20-13 [[1](#)]

2. [11-92004](#)-E-11 GREGORY/CYNTHIA SHINKWIN CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-3-11 [1]

Continued from 11/21/13 to allow the Plan Administrator to have the case administratively closed. The court approved compensation for Debtor in Possession counsel in October 2013. Order, Dckt. 211.

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3. [11-93411](#)-E-11 SANJIV/SHEENA CHOPRA

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-27-11 [[1](#)]

Debtors' Atty: Robert M. Yaspan

Final Ruling: The Status Conference is continued to 10:30 a.m. on February 13, 2014. No appearance at the January 30, 2014 Status Conference is required.

The court has issued an interim order confirming the Chapter 11 Plan in this case. A hearing is set for February 13, 2014, on the motion to approve a compromise between the Debtors, Debtors in Possession, Plan Administrators, Nagra, LLC, and Joginder Nagra. Approval of the settlement is the last step required for the court to issue a final order confirming the plan.

The court continues the Status Conference to the date and time of the hearing on the motion to approve the Nagra Settlement. At that time counsel for the Debtors in Possession/Plan Administrators shall provide the court with a schedule for (1) obtaining a final order confirming the plan, (2) filing of all final compensation motions, (4) other post-confirmation motions, and (4) filing of a motion to administratively close the case.

Notes:

Continued from 10/31/13

Operating Reports filed: 11/12/13, 12/11/13, 1/16/14

[RMY-20] Objection to Claim of Karan Sethi, Claim Number 11-2. Pursuant to stipulation, objection withdrawn. Hearing dropped from calendar.

[RMY-21] Evidentiary Hearing re Objection to Claim of Nagra, LLC scheduled for 2/19/14 at 9:30 a.m. [Dckt 777]

[RMY-25] Interim Order Confirming Debtors' Second Amended Plan of Reorganization filed 1/10/14 [Dckt 927]

[RMY-43] Motion to Compromise Controversy Between Debtors and Nagra, LLC and Joginder Nagra filed 1/8/14 [Dckt 923], set for hearing 2/13/14 at 10:30 a.m.

4. [13-90935](#)-E-12 ARTURO/RAMONA ROMERO
KDG-5 Hagop T. Bedoyan

CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
8-12-13 [[44](#)]

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2013. By the court's calculation, 80 days' notice was provided.

No Tentative Ruling: The Motion to Confirm Chapter 12 Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1).

The court's tentative decision is to xxxx the Motion to Confirm Chapter 12 Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors-in-Possession move the court for an order confirming their Chapter 12 Plan filed on August 10, 2013.

OPPOSITION

Creditors American Equity Service, Inc. ("Creditor") objects to confirmation of the Chapter 12 Plan on several grounds.

First, Creditor argues that Debtors-in-Possession are not family farmers pursuant to 11 U.S.C. § 109(f). Creditor states that during 2012 the Debtors-in-Possession derived only 36.1% of their income from farming operations, and during 2011 and 2010 (the prior two years before filing) derived 32.2% and 34.5% of their gross income from farming respectively. Creditor argues that Debtors-in-Possession must have at least 50% of their gross annual income, during either the last full year before the Petition Date or during each of the two previous years, must be derived from farming operations. 11 U.S.C. § 101(18) (A).

Creditor also argues that Debtors-in-Possession do not propose to make any changes to their farming operations, which shows that their income will not be sufficiently stable and regular pursuant to 11 U.S.C. § 101(19).

Second, Creditor argues that the plan is not feasible. Creditor states that even if Debtors-in-Possession qualify as family farmers, they have failed to demonstrate that they will have the income or profits necessary to make the plan feasible. Creditor argues that the record includes no evidence that substantial and consistent operating losses of over the last six years will do anything other than remain substantial and consistent operating losses over the term of the Plan, and the Debtors-in-

Possession have failed to show that sales of equipment that are proposed under the Plan will yield revenue sufficient to fund the plan.

Lastly, Creditor argues that the plan lacks good faith as to their claim. Creditors states that the plan proposes that Creditor, after the debt became due and payable in 2013, wait another ten years for payment. Creditor argues that the Debtors have a bad record regarding paying Creditor and that nothing would change the record in the future, except they will try to sell some poorly identified equipment, which does not state the tax consequences of such a sale. Creditor states that the circumstances of the case demonstrate that Debtors-in-Possession do not propose to make any significant changes in their activities to demonstrate that they in good faith intend that the plan will result in payment to Creditor and other creditors.

CONTINUANCE

The parties filed a Stipulation on September 19, 2013, to continue the hearing to allow the parties to negotiate. The court ordered the continuance on September 23, 2013. Dckt. 75.

AMENDED CHAPTER 12 PLAN DATED NOVEMBER 15, 2013

Debtors filed an Amended Chapter 12 Plan on November 19, 2013.

OPPOSITION

American Equity Service, Inc. continued its objection to the amended plan, as Debtors-in-Possession now propose to enter into a real estate purchase contract with their two daughters, giving their two daughters 90 days to conclude a purchase of the real property. If the 90 days pass without the sale, the Debtors-in-Possession are to immediately list the real property and would have until June 1, 2014 to place the property in escrow and until August 2014 to close escrow. Creditor objects as during this time no payments are being made to it.

Creditor maintains its prior objections, that Debtors-in-Possession are not family farmers pursuant to 11 U.S.C. § 109(f), and that the plan is not proposed in good faith.

Creditor adds objections that the amended plan contains an improper priority of distribution scheme, which violates the rules on prioritization of claims.

Creditor also objects to the 5% interest rate on their claim and that the amended plan does not provide what will happen if the Debtors-in-Possession default on their obligation to Creditor.

DEBTOR'S REPLY

Debtors-in-Possession filed a reply, stating they have continued negotiations concerning the terms of the plan and that they are close to an agreement with Creditor. However, to date, no agreement has been reached.

Debtors-in-Possession contend that they do qualify as family farmers as defined in 11 U.S.C. § 109(f), that the plan does meet the good faith requirement. Debtors-in-Possession also argue that the distribution scheme in the plan does not violate the law, stating that while Creditor did not cite law, that they assume Creditor objects to the payment of costs of sale and capital against taxes in advance of it's claim. Debtors-in-Possession states this does not violate the law because the proceeds received from the sale is sufficient to pay all claims in full and all creditors and costs will be paid at essentially the same time (and in full). Debtors-in-Possession also state that the costs of sale and capital gains taxes must be paid in the liquidating plan, otherwise the court will not generally allow the sale and the court can authorize a surcharge under section 503(c) if necessary.

Debtors-in-Possession also state under the U.S. Supreme Court decision, *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), it has met its burden with respect to the 5% interest rate provided under the plan.

Debtors-in-Possession argue that the plan is feasible and that the Bankruptcy Code does not require that a plan must provide for the possibility of default to be confirmed.

CONTINUANCE

The court continued the hearing pursuant to a Stipulation of the parties and order of the court.

No further documents have been submitted to the court to date.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Chapter 12 Plan filed by Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxx

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, buyers, parties requesting special notice, and Office of the United States Trustee on November 20, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to xxxx the Motion to Sell Property without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor in Possession to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b).

Here, the Debtors-in-Possession propose to sell the real property commonly known as 6955 Faith Home Road, Ceres, California, which includes a 5600 square foot family residence, 20 acres of farmland planted in Hazel, Corral and Champagne cherries, 2 offices, 2 shops a barn and a 1979 Sandpointe single wide mobile home. The sales price is \$1.5 million and the named buyers are Gloria Romero, Debtors-in-Possession daughter, and Bernadette Estacio, Debtors-in-Possession other daughter. Debtors are insiders to Debtors-in-Possession.

The terms are set forth in the Purchase Agreement, entered into November 20, 2013, filed as Exhibit B in support of the Motion. Dckt. 113.

The subject real property is subject to a deed of trust held by American Equity Service, Inc., which asserts \$1,081,630.80 on the petition date. Debtors-in-Possession state they anticipate the cost of sale to be no more than two percent of the purchase price, or \$30,000.00 and there is no broker's commission to be paid. Debtors-in-Possession assert there will be no capital gains tax incurred as a result of the sale. Debtors-in-Possession state the proceeds of the sale will be paid to creditors in order of priority set by law and the remainder of the proceeds will be forwarded to the Trustee to fund the Amended Chapter 12 Plan.

Debtors-in-Possession estimate that the creditors will be paid 100 percent of the debts owed to them from the proceeds of the sale.

OPPOSITION

Creditor American Equity Service, Inc. objects to the Debtors-in-Possession motion on the grounds that the proposed sale is nothing more than a 90 day "free option" for the Debtors' two daughters to buy the residence, while making no debt service payments to Creditor. Creditor states that the \$5,000.00 deposit required by the buyers, which will be passed through to the Debtors-in-Possession to pay property tax payment, is the only substantive requirement by the buyers. Creditor seeks the property be listed for sale with a qualified broker immediately.

DISCUSSION

The court is concerned with one item of the proposed sale of the subject real property. While Debtors-in-Possession disclosed that the proposed sale is to their two (2) daughters, Debtors-in-Possession made no attempt to assure the court or the parties that the purchase price is fair market value. No evidence has been presented to the court that the purchase price of \$1.5 million is fair market value for the subject real property. It does not appear the sale is going through a broker as no broker fees are provided. The court is concerned that the sale to insiders has not been fully discussed.

CONTINUANCE

The court continued the hearing pursuant to a Stipulation of the parties and order of the court.

No further documents have been submitted to the court to date.

A minute order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to sell property filed by the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxx.

6. [13-90935](#)-E-12 ARTURO/RAMONA ROMERO
MHK-1 Hagop T. Bedoyan

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-27-13 [[49](#)]

AMERICAN EQUITY SERVICE,
INC. VS.

CONT. FROM 9-26-13

Local Rule 9014-1(f)(1) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to xxxx the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

American Equity Service, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6955 Faith Home Road, Ceres, California. The moving party has provided the Declaration of Devra Riggs to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant contends that cause exists for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). The Riggs Declaration states that the Debtor failed to perform as agreed under the terms of their loan and Debtors have cancelled their insurance either differed times placing force-placed insurance on the property, seven forbearance agreements have been negotiated, and for formal loan modification have been executed, five notices of default entered. AES opines that the current value of the property is \$1,400,000, when the debtor lists the current value of the property at \$2,120,000 in their schedules. AES is owed \$1,081,630.80.

Movant argues that the Debtors past economic performance both before and after the loan shows Debtors will once again default on their obligations. Movant argues that the Debtors will be in their mid 90's when the loan becomes due under the plan and that most of the AES investors are elderly and unlikely to see the performance of the loan.

Movant states several plan objections, stating the proposed interest rate is too low, the plan treatment purports to amortize the claim over 30 years, but the plan treatment is inconsistent. Movant is not sure where the annual payment to AES will come from.

OPPOSITION

Debtors argues that the motion must be denied because a substantial equity cushion exists in the property to protect Movant's interest, well over 11.45 percent. Debtors state that the property is also currently covered by insurance. Debtors argue that there is not sufficient cause to lift the automatic stay.

STIPULATION

The parties filed a Stipulation to continue the hearing and Debtors agreed to provides AES with the following adequate protection:

(1) Debtors will provide AES with an accounting of the 2013 cherry crop and crop proceeds on or before October 24, 2013, and;

(2) Debtors will pay the net proceeds of the 2013 cherry crop, not to be less than \$8,000.00 to AES on or before October 10, 2013, to be applied to the outstanding debt owed to AES.

Movant filed a Notice of Compliance, stating Debtors complied with the Stipulation and provided AES with a check in the amount of \$8,048.28 and the 2013 cherry crop accounting from the packer.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

CONTINUANCE

The court continued the hearing pursuant to a Stipulation of the parties and order of the court.

No further documents have been submitted to the court to date.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for relief from the automatic stay is **xxxxxxx**.